

MEMORANDUM OF AGREEMENT

BETWEEN

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

And

COLORADO DEPARTMENT OF PUBLIC SAFETY

I. PURPOSE

The purpose of this Memorandum of Agreement (MOA) is to set forth the responsibilities of the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE) and the State Identification Bureau (SIB) regarding implementation of the Secure Communities (SC) initiative related to biometric interoperability. SC is a comprehensive ICE initiative that focuses on the identification and removal of aliens who are convicted of a criminal offense and are subject to removal, including the utilization of advanced biometric and communications technology, to share information among law enforcement agencies (LEAs) to identify, detain, and remove from the United States aliens who have been convicted of a serious criminal offense and are subject to removal.

II. AUTHORITY

Immigration and Nationality Act (INA) provisions regarding identification, detention, arrest, and removal of aliens (8 U.S.C. §1226(c); 8 U.S.C. §1226(d); 8 U.S.C. §1226(e); 8 U.S.C. §1227(a)(2); and 8 U.S.C. §1228); the INA provision regarding liaison activities with internal security officers and data exchange (8 U.S.C. §1105); and fiscal year (FY) 2008 DHS Appropriations Act (Pub. L. No. 110-161, 121 Stat. 1844, 2365 (2007)).

III. THE GOALS OF SECURE COMMUNITIES

ICE is committed to improving community safety by transforming the manner in which the Federal Government cooperates with state and local LEAs to identify, detain, and remove aliens convicted of a criminal offense. ICE utilizes advanced technology to improve information sharing among LEAs and will apply a risk-based methodology to focus resources in order to carry out ICE's civil immigration enforcement priorities.

To accomplish this goal, ICE leverages business and technical agreements between the DHS United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division Integrated

Automated Fingerprint Identification System (IAFIS). The combined biometric and communications technology is known as IDENT/IAFIS Interoperability.

- A. For the purpose of SC, the SIB and the state and local LEAs will continue to operate pursuant to the FBI CJIS Division's established policies and agreements. This MOA does not affect a state's existing relationship with the FBI CJIS Division. Rather, the MOA builds on and enhances that relationship. This MOA, by itself, confers no authority upon participating LEAs to enforce the INA. Neither the SIB nor any state or local LEA that is subject to this MOA will be responsible for determining an individual's immigration status, or whether a particular conviction renders an individual removable pursuant to the INA.
- B. ICE will employ a risk-based approach to identify aliens charged with or convicted of a criminal offense and incarcerated in jails and prisons throughout the United States who are eligible for removal based on the severity of their offenses.

At no time shall this MOA be construed to limit the discretion of ICE in managing detention resources.

IV. STATE IDENTIFICATION BUREAU (SIB) RESPONSIBILITIES

- A. The SIB responsibility under this MOA begins when the LEA submits a Criminal Answer Required (CAR) request, as appropriate according to CJIS procedure, to the SIB of the state in which the individual is being booked. The SIB will then electronically send the fingerprints to the FBI CJIS Division. Receipt of the CAR will initiate a search of both IAFIS and US-VISIT IDENT. However, National Fingerprint File (NFF) states send fingerprints to the FBI CJIS Division only at the time of the initial arrest. Second or subsequent criminal bookings in the NFF states result in a Criminal Print Ident (CPI) file maintenance message to the FBI CJIS Division. In the case of a subsequent arrest for an NFF state, the SIB will forward a CPI file maintenance message instead of a CAR to the FBI CJIS Division. There is no change in IAFIS processing.
- B. If there is a match in IDENT and the SIB has the technical capabilities to receive the response message, CJIS transmits the search results in a joint IDENT Data Response (IDR) and Immigration Alien Response (IAR) to the SIB. The SIB will in turn relay that response to the local LEA. If the SIB does not have the technical capability to receive or relay the response message, CJIS at the request of the SIB will not send the SIB a match message. A "no match IDR" will be generated when a match is not found in IDENT and routed in the same manner as an IDR and IAR.

V. ICE RESPONSIBILITIES

- A. Once fingerprint information is received by IAFIS, it will be cross-checked against the DHS US-VISIT IDENT system.
- B. Upon receipt of an Immigration Alien Query (IAQ) from the FBI CJIS Division that there has been a match with the subject's fingerprint in IDENT, the ICE Law Enforcement Support Center (LESC) will conduct an immigration status determination.
- C. ICE will process for removal proceedings, as necessary, and take the alien into custody after completion of the individual's sentence or when released from local custody based upon ICE's civil immigration enforcement priorities.
- D. ICE will rely on establishing in the field a "24/7" IDENT/IAFIS Interoperability response capability and may utilize video teleconferencing (VTC) to streamline the process of identifying and removing aliens convicted of a serious criminal offense.
- E. ICE acknowledges Colorado Revised Statute (C.R.S.) § 29-29-103 in which a local government must cooperate with the Federal Government by reporting the arrest of a suspected illegal alien, except for domestic violence arrestees, in which case the required reporting is not required until the arrestee is convicted for a domestic violence offense, as defined by C.R.S. § 18-6-800.3.
- F. ICE offers protection and assistance to victims of trafficking and violence, regardless of their immigration status. This protection or assistance applies to those who might have been arrested for a crime and subsequently determined to be a victim, not a perpetrator.
- G. ICE will provide to the SIB quarterly statistics which will include the following metrics criteria:
 - 1. Number of searches to IDENT;
 - 2. Number of matches to IDENT data;
 - 3. Number of detainees issued by ICE based on Level 1, Level 2, and Level 3 offense categories;
 - 4. Number of identified detainees prosecuted criminally in federal court;
 - 5. Number of identified detainees removed from the United States;
 - 6. Number of United States citizens identified through the SC initiative; and
 - 7. Nationality of individuals identified through the SC initiative.

VI. PERIOD OF AGREEMENT

This MOA shall be effective upon signing by both parties and will remain in effect until terminated by either party in accordance with the Section (below): MODIFICATIONS AND TERMINATION.

VII. DISPUTE RESOLUTION

The parties agree that should any disagreements arise as a result of this MOA, the first attempt at resolution shall occur at the program office level with the area(s) of disagreement reduced to writing and submitted to the appropriate program office point of contact (POC). If a resolution cannot be reached at this level, the disagreement will be raised to the agency level in accordance with component procedures.

VIII. MODIFICATIONS AND TERMINATION

This MOA may be modified at any time by mutual written consent of both parties.

This MOA will remain in effect from the date of signing until it is terminated by either party. Either party upon 30 days written notice to the other party may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail, and termination shall take effect 30 days after receipt of such notice.

Either party upon written or oral notice to the other party may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the SIB POC. Notice of termination or suspension by the SIB shall be given to the ICE POC. The temporary suspension of activities will take effect immediately upon receipt of such notice.

Use of IDENT/IAFIS for the purposes of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity. ICE reserves the right to take appropriate remedial action if necessary.

IX. COSTS AND EXPENDITURES

Parties to this MOA are responsible for their own costs associated with carrying out activities under this MOA. Nothing in this MOA is intended to imply that either Congress or state or local legislatures will appropriate funding for activities under this MOA.

X. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES

The SIB may, at its discretion, communicate the substance of this MOA to law enforcement professional organizations expressing an interest in the law enforcement activities to be engaged in under this MOA. It is ICE's practice to provide a copy of this MOA to requesting media outlets only after both parties have signed the MOA. Local LEAs are authorized to do the same. However, the release of statistical information regarding the SC initiative will be coordinated with the ICE Public Affairs Office POC identified in Appendix C.

The SIB hereby agrees, to the extent authorized by law, to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. The POCs for ICE and the SIB for this purpose are identified in Appendix B.


XI. SUMMARY OF ICE AND STATE LAW ENFORCEMENT AGENCY RESPONSIBILITIES

This MOA does not, nor is it intended to, nor shall be construed to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOA, each party represents it is fully authorized to enter into this MOA and accepts the terms, responsibilities, obligations, and limitations of this MOA.

Date: 1/6/2011



 David J. Venturella
Assistant Director, Secure Communities
U.S. Immigration and Customs
Enforcement

Date: January 4, 2011



Kathy E. Sasak
Executive Director
Colorado Department of Public Safety

Appendix A

Acronyms and Abbreviations

Acronym/Abbreviation	Definition
CAP	Criminal Alien Program
CAR	Criminal Answer Required
CJIS	Criminal Justice Information Services
CPI	Criminal Print Identification
DHS	Department of Homeland Security
DOJ	Department of Justice
ERO	Enforcement and Removal Operations
FAQ	Frequently Asked Questions
FBI	Federal Bureau of Investigation
HSI	Homeland Security Investigations
IAFIS	Integrated Automated Fingerprint Identification System
IAQ	Immigration Alien Query
IAR	Immigration Alien Response
ICE	U.S. Immigration and Customs Enforcement
IDENT	US-VISIT Automated Biometric Identification System
IDR	IDENT Data Response
LEA	Law Enforcement Agency
LESC	Law Enforcement Support Center
MOA	Memorandum of Agreement
ORI	Originating Agency Identifier
POC	Point of Contact
SC	Secure Communities
SIB	State Identification Bureau
SOP	Standard Operating Procedures
US-VISIT	United States Visitor and Immigrant Status Indicator Technology

APPENDIX B

Points of Contact

ICE and SIB points of contact for purposes of implementation of this MOA are:

For the SIB:

Karl Wilmes
Colorado Bureau of Investigation
Suite 3000
690 Kipling Street
Denver, CO 80215-8001

For ICE Enforcement and Removal Operations (ERO):

John Longshore, Field Office Director
Enforcement and Removal Operations
4730 Paris Street
Denver, CO 80239

For ICE Homeland Security Investigations (HSI):

Paul Maldonado, Acting Special Agent in Charge
Homeland Security Investigations
5445 DTC Parkway
Suite 600
Englewood, CO 80111

APPENDIX C

Public Information Points of Contact

Pursuant to Section X. of this MOA, RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES, the signatories will coordinate with the ICE Public Affairs Office regarding release of any information about Secure Communities and/or IDENT/IAFIS Interoperability, and agree to coordinate appropriate release of subsequent information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For the SIB:

Karl Wilmes
Colorado Bureau of Investigation
Suite 3000
690 Kipling Street
Denver, CO 80215-8001

For ICE:

Carl Rusnock
Office of Public Affairs
U.S. Immigration and Customs Enforcement
7701 North Stemmons Freeway
Dallas, TX 75247